IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 24399 of 2004(D)

IA.1168/04 IN OS.148/2001 of MUNSIFF'S COURT, HOSDRUG

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PETITIONER:

ALUMMATTAMMAL PATTA, AGED 70 YEARS,
D/O LATE MANIKKAM,HOUSEHOLD, RESIDING AT HOUSE
NO.200,WARD NO.6,KAYYUR CHEEMANI PANCHAYAT,
KAYYUR VILLAGE,KAYYUR POST,HOSDURG TALUK.

BY ADV. SRI.K.RAJEEVAN
SMT.P.S.PREETHA

RESPONDENTS:

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1. ARAKKAPLAVIL KARICHI,
D/O CHITTEYI,ARAKKAPLAVIL,HOUSEHOLD.

2. ARAKKAPLAVIL KUNHACHA,
D/O ARAKKAPLAVIL CHITTEYI,
BOTH ARE RESIDING AT
KEEZHMALA,KALLAMPARA,POST,KALLAMPARA,
KARINDALAM VILLAGE,HOSDURG TALUK.

3. A.P.AMBADI,FARMER,RESIDING AT AZHITHALA
THYKADAPURAM,PADANNA VILLAGE,HOSDURG TALUK.

4. ARAKKAPLAVIL MANIKKAM,HOUSEHOLD,
RESIDING AT PARAKKAL,KARINDALAM VILLAGE
HOSDURG TALUK.

5. ARAKKAPLAVIL KARTHYAYINI,HOUSEHOLD,
RESIDING AT KAYYUR,KAYYUR VILLAGE,
HOSDURG TALUK.

6. ARAKKAPLAVIL BALAMANI,HOUSEHOLD,
RESIDING AT KEEZHMALA KOLLAMPARA IN KARINDALAM
VILLAGE,HOSDURG TALUK.

7. YASODA MAYYIL, D/O VATTICHI,HOUSEHOLD,
RESIDING AT MAYYIL,KAYYUR VILLAGE,HOSDURG TALUK.

8. ARAKKAPLAVIL VELLACHI (DEAD),
D/O LATE MANIKKAM AND RESIDING AT MAYYIL
THATTUMMAL,KAYYUR VILLAGE,HOSDURG TALUK,
P.O.PADAVOOR.

9. CHIRUTHAKUNHI,D/O LATE VELLACHI,
RESIDING AT HOUSE NO.199,WARD NO.6,
KAYYUR CHEEMANI PANCHAYAT,KAYYUR VILLAGE,
KAYYUR P.O.,HOSDURG TALUK.

10. A.M.KUMARAN, HUSBAND OF CHIRUTHAKUNHI,
RESIDING AT HOUSE NO.199, WARD NO.6,
KAYYUR CHEEMENI PANCHAYAT, KAYYUR VILLAGE,
HOSDRUG TALUK.

11. K.V.NARAYANAN, S/O.LATE VELLACHI, RESIDING AT HOUSE NO.201, WARD NO.6, DO. DO.

R1 TO R7 BY ADV. SRI.BOBBY JOHN
SRI.VETRADY ROSHAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.24399/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF REPORT AND PLAN DT.21.2.04 SUBMITTED BY ADV. COMMR.

EXT.P2 – TRUE COPY OF APPLICATION FILED BY PETR.

EXT.P3 – TRUE COPY OF ORDER DT.6.8.04

RESPONDENTS' EXTS:

EXT.R1 – TRUE COPY OF I.A.2070/04 DT.30.9.02

EXT.R2 – TRUE COPY OF COUNTER FILED TO I.A.1168/04 DT.14.7.04

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.24399 OF 2004

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DATED THIS THE 20TH JUNE, 2007

J U D G M E N T

This Writ Petition is remaining defective on the reason of non-completion of service of notice to the 8th respondent. But I find that the 8th respondent is already dead and that her legal representatives are already on the array of parties.

2. The impugned order is Ext.P3 by which the court below has dismissed an application submitted by the petitioner who was the 2nd defendant in the suit for remitting the commissioner's report on the various reasons stated in the objections to the report. I do not find any infirmity about Ext.P3 so as to warrant interference with the same in this Court's supervisory jurisdiction. But even as I confirm Ext.P3, I permit the petitioner to cross-examine the advocate commissioner on the basis of whatever objections have been raised to the commission report and if the evidence which is adduced by the petitioner in substantiation of the objections to the commissioner's report convinces the learned Munsiff during trial that the commissioner's report requires to be remitted, then the confirmation of Ext.P3 will not stand in the way of the Munsiff ordering such remittance. In view of the above directions, the learned Munsiff is directed to allow the petitioner to

examine the commissioner as the first witness on her side, if she so chooses.

Subject to the above directions, the challenge against Ext.P3 is repelled and the Writ Petition is dismissed.

(PIUS C.KURIAKOSE, JUDGE)

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